

1 WAYNE A. SILVER, Esq. (CA 108135)  
2 333 West El Camino Real, Suite 310  
3 Sunnyvale, California 94087  
4 Email: w\_silver@sbcglobal.net  
5 Tel. (408) 720-7007  
6 Fax. (408) 720-7001  
7 (Admitted Pro Hac Vice)

8 LAW OFFICES OF AMY N. TIRRE  
9 Amy N. Tirre, Esq. (NV 6523)  
10 3715 Lakeside Dr., Suite "A"  
11 Reno, NV 89509  
12 Email: amy@amytirrelaw.com  
13 Tel. (775) 828-0909  
14 Fax. (775) 828-0914

15 Attorneys for Plaintiff,  
16 KENMARK VENTURES, LLC

17 **UNITED STATES BANKRUPTCY COURT**  
18 **DISTRICT OF NEVADA**

19 In re:  
20 ANTHONY THOMAS and WENDI  
21 THOMAS,  
22 AT EMERALD, LLC,  
23 Debtors.

Case No. BK-N-14-50333-BTB  
Case No. BK-N-14-50332-BTB

Chapter 11

[Jointly Administered]

**LIMITED OBJECTION TO MOTION  
TO SELL ASSETS FREE AND CLEAR  
OF LIENS**

Hearing Date: July 1, 2014  
Hearing Time: 2:30 p.m.

24 KENMARK VENTURES, LLC ("Kenmark"), through its counsel Wayne A. Silver and Amy  
25 N. Tirre, hereby objects to the motion of ANTHONY THOMAS and WENDI THOMAS  
26 ("Debtors") to sell assets free and clear of liens.

27 1. Kenmark is a California Limited Liability Company doing business in Santa Clara  
28 County, California.

2. Kenmark filed a Proof of Claim (Claim No. 7) in the Debtors' above-captioned

1 Chapter 11 case on June 12, 2014 in the amount of \$4.5m. The Court is requested to take judicial  
2 notice of the Proof of Claim.

3 3. Kenmark also filed an adversary proceeding against the Debtors on May 31, 2014,  
4 Adv.Pro.No. 14-5022, seeking a judgment in the mount of \$4.5m plus interest and attorneys' fees,  
5 and a declaration that such judgment is non-dischargeable under 11 U.S.C.§523(a)(2). The Court is  
6 requested to take judicial notice of the Adversary Complaint, attached hereto. The Adversary  
7 Complaint alleges Anthony Thomas made several false representations to Kenmark's principals to  
8 induce Kenmark to loan him and a related entity in excess of \$6.0m The Adversary Complaint has  
9 been served on the Debtors and return of summons has been filed.

10 4. Kenmark is informed and believes the Debtors dispute the Proof of Claim however,  
11 are not aware of the grounds of the dispute. No objection to the Proof of Claim has been filed.

12 5. Kenmark does not object to the proposed sale *per se*, however does object to the  
13 Debtors' unfettered retention and control of the sales proceeds in light of the serious allegations of  
14 fraud against them.

15 6. Kenmark therefore requests the Court order \$5.0m of the sales proceeds be  
16 segregated, delivered to and held in the undersigned attorney's trust account, on the condition that no  
17 portion of such funds may be disbursed without further order of this Court upon either consent of, or  
18 notice and opportunity to be heard given to, Debtors' attorneys of record.

19 Dated: June 27, 2014

Respectfully submitted,

20 /s/ Wayne A. Silver

21 Wayne A. Silver, attorney for  
22 KENMARK VENTURES, LLC  
23  
24  
25  
26  
27  
28

WAYNE A. SILVER, Esq. (CA 108135)  
333 West El Camino Real, Suite 310  
Sunnyvale, California 94087  
Email: w\_silver@sbcglobal.net  
Tel. (408) 720-7007  
Fax. (408) 720-7001  
(Admitted Pro Hac Vice)

LAW OFFICES OF AMY N. TIRRE  
Amy N. Tirre, Esq. (NV 6523)  
3715 Lakeside Dr., Suite "A"  
Reno, NV 89509  
Email: amy@amytirrelaw.com  
Tel. (775) 828-0909  
Fax. (775) 828-0914

Attorneys for Plaintiff,  
KENMARK VENTURES, LLC

**UNITED STATES BANKRUPTCY COURT**  
**DISTRICT OF NEVADA**

In re:  
  
ANTHONY THOMAS and WENDI  
THOMAS,  
  
AT EMERALD, LLC,  
  
Debtors.

KENMARK VENTURES, LLC  
  
Plaintiff,

v.

ANTHONY THOMAS and WENDI  
THOMAS,  
  
Defendants.

Case No. BK-N-14-50333-BTB  
Case No. BK-N-14-50332-BTB

Chapter 11

[Jointly Administered]

Adv. Pro. No. \_\_\_\_\_

**COMPLAINT FOR DAMAGES AND TO  
DETERMINE DISCHARGEABILITY OF  
DEBT**

**[11 U.S.C. §523(A)(2)]**

Plaintiff KENMARK VENTURES, LLC ("Plaintiff"), through its counsel Wayne A. Silver and Amy N. Tirre, hereby complains and alleges against ANTHONY THOMAS and WENDI THOMAS ("Defendants") the following:

**I. JURISDICTIONAL ALLEGATIONS**



1 the separate personalities of ANTHONY THOMAS and EPL no longer exist, and that if the acts are  
2 treated as those of EPL alone, it would sanction a fraud or promote injustice to uphold the EPL  
3 corporate entity and allow ANTHONY THOMAS to escape personal liability for the debt.

4 10. On information and belief, ANTHONY THOMAS is personally liable for directly  
5 authorizing and/or actively participating in and/or controlling the wrongful or tortious conduct  
6 described below, notwithstanding the fact that ANTHONY THOMAS was purporting to act on  
7 behalf of EPL.

8 11. ANTHONY THOMAS is therefore fully responsible for any obligation owed to  
9 Plaintiff by EPL. Plaintiff expressly reserves the right to name EPL as a defendant in this Adversary  
10 Proceeding to the extent necessary to enforce Plaintiff's rights and remedies against Defendants.

### 11 **III. GENERAL ALLEGATIONS**

12 12. In early 2007, in San Jose, California, Defendant ANTHONY THOMAS purportedly  
13 acting on behalf of and in concert with EPL, approached Plaintiff seeking to borrow funds, allegedly  
14 to pay for the development and marketing of a proprietary biometric smartcard technology for  
15 authenticating identification for electronic transactions and other applications (hereinafter  
16 "Smartcard Technology"). ANTHONY THOMAS represented to Plaintiff that EPL was at the stage  
17 of marketing the Smartcard Technology for commercial use and manufacturing, that there was  
18 significant interest in various industry sectors in purchasing security products containing the  
19 Smartcard Technology and EPL was forecasting that they would be selling 30 million smartcards in  
20 the next 24 to 30 months.

21 13. Plaintiff was not interested in making an equity investment in EPL for the  
22 development and marketing of Smartcard Technology or otherwise; however, on the basis of  
23 ANTHONY THOMAS' representations and the written business plan provided by ANTHONY  
24 THOMAS and EPL, Plaintiff was willing to lend money to ANTHONY THOMAS and EPL, to be  
25 used for the sole and specific purpose of developing and marketing the Smartcard Technology,  
26 provided that ANTHONY THOMAS and EPL were able to provide adequate security for any sums  
27 loaned.

28 14. In response to Plaintiff's requirement for adequate security for the loan sought by

1 ANTHONY THOMAS and EPL, ANTHONY THOMAS represented to Kenneth Tersini, as an  
2 agent of Plaintiff and to other members of Plaintiff and their agents and representatives, that he  
3 owned a raw emerald weighing over 21,000 carats and appraised as having a value of over Five  
4 Hundred Million Dollars (\$500,000,000.00) (hereinafter the "Emerald") and that ANTHONY  
5 THOMAS was willing to provide the Emerald as security for Plaintiff's loan.

6 15. Based on these representations and written materials material provided by  
7 ANTHONY THOMAS and EPL, Plaintiff agreed to loan ANTHONY THOMAS and EPL up to Six  
8 Million One Hundred Ten Thousand Dollars (\$6,110,000.00) through a series of fundings, for the  
9 specific purpose of developing and marketing the Smartcard Technology.

10 16. Pursuant to the terms of the initial oral agreement, commencing in June of 2007 and  
11 ending in May 2008, through a series of fundings, Plaintiff loaned a total of Six Million One  
12 Hundred Ten Thousand Dollars (\$6,110,000.00) to ANTHONY THOMAS and EPL

13 17. In or about June 2007, ANTHONY THOMAS delivered possession of the Emerald to  
14 Plaintiff by depositing the Emerald in a security deposit box at Wells Fargo Bank in Reno, Nevada  
15 and delivering to Plaintiff's agent the key to said security deposit box, all for the purpose of allowing  
16 Plaintiff to perfect its security interest in the Emerald by possession. Out of an abundance of caution,  
17 Plaintiff also perfected its security interest in the Emerald by filing a UCC-1 with the State of  
18 Nevada, where the Emerald was then located.

19 18. On or about October 25, 2007, ANTHONY THOMAS and EPL executed and  
20 delivered a secured Promissory Note in the then current principal amount of Three Million Dollars  
21 (\$3,000,000.00), and to include and be increased by any and all additional future advances (the  
22 "Note"). The Note was secured by a Security Agreement designating the Emerald as collateral for  
23 performance of the Note ("Security Agreement"). True and correct copies of the Note and Security  
24 Agreement are attached hereto as Exhibit "A" and "B," respectively. Subsequent to the execution of  
25 Exhibit "A," Plaintiff loaned an additional Three Million One Hundred Ten Thousand Dollars  
26 (\$3,110,000.00) to ANTHONY THOMAS and EPL, increasing the total amount owed under the  
27 Note to Six Million One Hundred Ten Thousand Dollars (\$6,110,000.00).

28 19. In or about of May 2008, ANTHONY THOMAS requested that Plaintiff allow the

1 Emerald to be removed from the security bank box in Reno, Nevada and transported to a vault in  
2 Sarasota, Florida, to be shown to a potential buyer or buyers, allegedly interested in purchasing the  
3 Emerald. ANTHONY THOMAS also represented that upon any sale of the Emerald, and directly  
4 from the proceeds of the sale of the Emerald, they would immediately repay Plaintiff the outstanding  
5 balance of the Note. Based on such representations, Plaintiff authorized ANTHONY THOMAS to  
6 transport the Emerald to Florida to be deposited in a vault in Sarasota, Florida for the sole purpose of  
7 allowing the potential buyer(s) to examine the Emerald and effectuate the sale of the Emerald to  
8 such potential buyer(s). However, once the Emerald was in Sarasota, Florida, ANTHONY  
9 THOMAS refused Plaintiff access to the Emerald and made various excuses about alleged delays in  
10 selling the Emerald. Plaintiff was later informed by ANTHONY THOMAS that the potential buyer  
11 had a funding problem and could not proceed with the purchase.

12         20. On or about October 31, 2008, Plaintiff made a written demand to ANTHONY  
13 THOMAS and EPL to pay the Six Million One Hundred Ten Thousand Dollars (\$6,110,000.00)  
14 owed under the Note and return the possession of Emerald to Plaintiff to be held as security or  
15 otherwise disposed of pursuant to the terms of the Security Agreement. A copy of Plaintiff's demand  
16 letter is attached as Exhibit "C". In response to Plaintiff's demand, on or about November 6, 2008,  
17 Plaintiff received a letter from Defendants, through their attorney, advising that ANTHONY  
18 THOMAS and EPL refused to pay any amount owed under the Note or deliver possession of the  
19 Emerald.

20         21. Plaintiff therefore brought a Replevin action in the Circuit Court for the Twelfth  
21 Judicial Circuit in Sarasota County, Florida, Case No. 2008-CA-20557-NC to recover possession of  
22 the Emerald pursuant to the terms of the Security Agreement (the "Florida Replevin Action"). As the  
23 result of such action, the Emerald was held in Florida by Sarasota Vault, under the order of the  
24 Florida Circuit Court, which prohibited the Defendants in the Florida Replevin Action from gaining  
25 access to the Emerald, pending further order of the Florida Circuit Court.

26         22. Plaintiff also brought a civil action against ANTHONY THOMAS, EPL and others in  
27 the Santa Clara Superior Court, Case No. 108CV130677 (the "Santa Clara Lawsuit"). The Santa  
28 Clara Lawsuit was settled during trial, and called for ANTHONY THOMAS, EPL and the other

1 named defendants in the Santa Clara Lawsuit to pay Five Million Dollars (\$5,000,000.00) to the  
2 Plaintiff in a series of annual installment payments commencing on January 1, 2013 and ending on  
3 January 1, 2017. The Florida Replevin Action was dismissed as a condition of the settlement in the  
4 Santa Clara Lawsuit, as was a cross-complaint filed by ANTHONY THOMAS and jointly  
5 administered debtor A.T. EMERALD, LLC against Plaintiff. Although the settlement was not  
6 reduced to written agreement, it was placed on the record in the Santa Clara Lawsuit. A copy of the  
7 Transcript from that October 5, 2011 hearing in the Santa Clara Action is attached as Exhibit "D".

### 8 **FIRST CLAIM FOR RELIEF**

#### 9 **Money Damages for Breach of Settlement Agreement**

10 23. Plaintiff realleges and incorporates herein by this reference each of the allegations  
11 contained in paragraphs 1 – 22 above as though fully set forth hereagain in full.

12 24. ANTHONY THOMAS made a \$500,000.00 payment under the terms of the  
13 settlement agreement in the Santa Clara Lawsuit, however failed to make the payment due on  
14 January 1, 2014, or any subsequent payments.

15 25. On or about January 9, 2014, ANTHONY THOMAS and Plaintiff agreed to a  
16 Stipulation for Judgment in the Santa Clara Lawsuit ("Stipulation"), a copy of which is attached as  
17 Exhibit "E". ANTHONY THOMAS further agreed to pay Plaintiff \$575,000.00 toward the  
18 settlement agreement in the Santa Clara Lawsuit in exchange for an extension of the payment date to  
19 January 31, 2014, and Plaintiff's agreement not to file the Stipulation before that date.

20 26. ANTHONY THOMAS failed to pay the agreed \$575,000.00 toward the settlement  
21 agreement in the Santa Clara Lawsuit on or before January 31, 2014, and Plaintiff therefore gave the  
22 required notice to ANTHONY THOMAS of its intent to seek entry of judgment on the Stipulation.  
23 Plaintiff was prevented from obtaining a judgment against ANTHONY THOMAS by the filing of  
24 the Bankruptcy Case on March 4, 2014.

25 27. As a result, there is due and owing and unpaid from ANTHONY THOMAS to  
26 Plaintiff the sum of Four Million Five Hundred Thousand Dollars (\$4,500,000.00), together with  
27 interest thereon at the rate often percent (10%) per annum, plus attorneys' fees as allowed under the  
28 Note in an amount to be proven at trial ("Plaintiff's Claim").



1       **WHEREFORE**, Plaintiff prays for judgment against Defendants, and each of them, as set  
2 forth below.

3                               **SECOND CLAIM FOR RELIEF**

4                               **Nondischargeability – Fraud (Intentional Misrepresentation)**

5                               **[11 U.S.C. §523(a)(2)]**

6       28.     Plaintiff realleges and incorporates herein by this reference each of the allegations  
7 contained in paragraphs 1 – 27 above as though fully set forth hereagain in full.

8       29.     On or about May 1, 2007, in San Jose, California, ANTHONY THOMAS orally  
9 represented to Plaintiff, through its agent and members, Kenneth Tersini and Mark Tersini, that EPL  
10 owned or had an exclusive worldwide license for the use of the Smartcard Technology for all  
11 commercial purposes including manufacturing and marketing. Plaintiff, through its agents Kenneth  
12 Tersini and Mark Tersini, heard and believed these representations and relied on these  
13 representations in making the decision to lend and actually lending money to Defendants, as is  
14 evidenced by the Note.

15       30.     ANTHONY THOMAS made the representation in ¶29 to induce Plaintiff to make  
16 loans to him and to EPL in the ultimate amount of Six Million One Hundred Ten Thousand Dollars  
17 (\$6,110,000.00) to support the development and marketing of Smartcard Technology. This  
18 representation was false, and ANTHONY THOMAS knew said representation to be false at the time  
19 it was made. The true facts were, on information and belief, that EPL did not own or have credible or  
20 legal claim to the Smartcard Technology.

21       31.     On or about June 1, 2007, in San Jose, California, ANTHONY THOMAS orally  
22 represented to Plaintiff, through its agents and members, Kenneth Tersini and Mark Tersini, that  
23 ANTHONY THOMAS and ELP were seeking funding to develop and market the Smartcard  
24 Technology and that all loans received from Plaintiff would be used solely and exclusively for such  
25 purpose. This representation was made to induce Plaintiff to make loans to him and to EPL in the  
26 ultimate amount of Six Million One Hundred Ten Thousand Dollars (\$6,110,000.00) to support the  
27 development and marketing of Smartcard Technology. Plaintiff, through its agents Kenneth Tersini  
28 and Mark Tersini, heard and believed these representations and relied on these representations in

1 making the decision to lend and actually lending money to Defendants, as is evidenced by the Note.

2 32. ANTHONY THOMAS's representations in ¶31 regarding the use of funds were false.  
3 The falsity of these statements was known to ANTHONY THOMAS at the time they were made.  
4 The true facts were that ANTHONY THOMAS intended to and did use, or cause ELP to use, the  
5 sums evidenced by the Note and secured by the Security Agreement for purposes unrelated to  
6 production and marketing of Smartcard Technology. Plaintiff is informed and believes, and thereon  
7 alleges that ANTHONY THOMAS used the loan proceeds made pursuant to the Note for purposes  
8 other than the development and marketing of the Smartcard Technology, and used some or all of the  
9 proceeds for his personal expenses.

10 33. On or about May 1, 2007, in San Jose, California, ANTHONY THOMAS orally  
11 represented to Plaintiff, through its agent and members, Kenneth Tersini and Mark Tersini, that the  
12 Emerald described in ¶14 was extremely valuable and worth in excess of Five Hundred Million  
13 Dollars (\$500,000,000.00). This representation was made to induce Plaintiff to make loans to him  
14 and to EPL in the ultimate amount of Six Million One Hundred Ten Thousand Dollars  
15 (\$6,110,000.00) to support the development and marketing of Smartcard Technology. Plaintiff,  
16 through its agents Kenneth Tersini and Mark Tersini, heard and believed these representations and  
17 relied on these representations in making the decision to lend and actually lending money to  
18 Defendants, as is evidenced by the Note.

19 34. ANTHONY THOMAS's representations in ¶33 were false, and ANTHONY  
20 THOMAS knew said representation to be false at the time it was made. The true facts were the  
21 Emerald was worth far less than Five Hundred Million Dollars (\$500,000,000.00), its value was not  
22 sufficient to secure Plaintiff's loan, and ANTHONY THOMAS knew his appraisal was false.

23 35. Plaintiff did not know of the fraud perpetrated by ANTHONY THOMAS when  
24 Plaintiff made the demand for payment under the Note on October 31, 2008.

25 36. When ANTHONY THOMAS made the aforesaid representations in ¶¶29, 31 and 33  
26 and 34, he knew them to be false and made them with the intention to induce Plaintiff to act in  
27 reliance on these representations and to make the loans, as alleged above.

28 37. Plaintiff, at the time the representations in ¶¶29, 31 and 33 were made by ANTHONY

1 THOMAS and at the time Plaintiff took the actions herein alleged, was ignorant of the falsity of  
2 ANTHONY THOMAS's representations and believed them to be true. In reliance on these  
3 representations, Plaintiff was induced to and did make a series of funding totaling Six Million One  
4 Hundred Ten Thousand Dollars (\$6,110,000.00) to ANTHONY THOMAS and ELP pursuant to  
5 Exhibits "A" and "B". Had Plaintiff known the true facts, it would not have taken such action.  
6 Plaintiff's reliance on ANTHONY THOMAS's representations in ¶¶29, 31 and 33 was justified  
7 because Plaintiff had no cause to disbelieve him.

8 38. As a proximate result of the fraudulent statements of ANTHONY THOMAS in  
9 ¶¶29, 31 and 33, Plaintiff was induced to lend Six Million One Hundred Ten Thousand Dollars  
10 (\$6,110,000.00) to ANTHONY THOMAS and ELP. Plaintiff's Claim pursuant to the settlement in  
11 the Santa Clara Lawsuit, is therefore non-dischargeable under 11 U.S.C. §523(a)(2).

12 WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, as set  
13 forth below.

### 14 **THIRD CLAIM FOR RELIEF**

#### 15 **Nondischargeability – Fraud (Concealment)**

#### 16 **[11 U.S.C. §523(a)(2)]**

17 39. Plaintiff realleges and incorporates herein by this reference each of the allegations  
18 contained in paragraphs 1 – 38 above as though fully set forth hereagain in full.

19 40. On or about May 1, 2007, in San Jose, California, ANTHONY THOMAS orally  
20 represented to Plaintiff, through its agent and members, Kenneth Tersini and Mark Tersini, that EPL  
21 owned or had an exclusive worldwide license for the use of the Smartcard Technology for all  
22 commercial purposes including manufacturing and marketing in order to induce Plaintiff to make  
23 loans in the ultimate amount of Six Million One Hundred Ten Thousand Dollars (\$6,110,000.00) to  
24 support the development and marketing of Smartcard Technology.

25 41. ANTHONY THOMAS, at the time he made the representation to Plaintiff alleged in  
26 ¶40, concealed the fact that EPL was, in fact not the owner of the Smartcard Technology and that  
27 EPL and its members, as of May 1, 2007, were defendants in an on-going litigation then pending in  
28 Federal Court in San Francisco, California, where it was alleged that EPL and/or its members stole

1 the Smartcard Technology and challenged the right of EPL to use or distribute the Smartcard  
2 Technology.

3 42. The true facts were, on information and belief, that EPL did not own or have credible  
4 or legal claim to the Smartcard Technology.

5 43. ANTHONY THOMAS failed to disclose and suppressed the fact alleged in ¶¶40 - 42.

6 44. ANTHONY THOMAS's concealment of the existence of the pending legal action  
7 and suppressions of information herein alleged was undertaken with the intent to induce Plaintiff to  
8 loan \$6,100,000 to ANTHONY THOMAS and EPL.

9 45. Plaintiff, at the time these failures to disclose and suppression of material facts  
10 alleged in ¶¶40 – 42 occurred and at the time Plaintiff took the actions herein alleged, was ignorant  
11 of the true facts and the existence of the facts that ANTHONY THOMAS suppressed and failed to  
12 disclose. If Plaintiff had been aware of the true facts and existence of the facts suppressed and  
13 concealed, Plaintiff would not have made a loan in the amount of Six Million One Hundred Ten  
14 Thousand Dollars (\$6,110,000.00) or any lesser amount to ANTHONY THOMAS and EPL. As a  
15 result of the Plaintiffs reliance on ANTHONY THOMAS's concealments, Plaintiff was damaged in  
16 the sum of Six Million One Hundred Ten Thousand Dollars (\$6,110,000.00).

17 46. The aforementioned conduct of ANTHONY THOMAS constitutes a concealment of  
18 material facts known to him that he had a duty to disclose to Plaintiff in connection with the  
19 transactions alleged herein. ANTHONY THOMAS's concealment of these material facts was done  
20 with the express intention of depriving Plaintiff of property or legal rights or otherwise causing  
21 injury.

22 **WHEREFORE**, Plaintiff prays for judgment against Defendants, and each of them, as  
23 follows:

24 1. For judgment against Defendants in the amount of Four Million Five Hundred  
25 Thousand Dollars (\$4,500,000.00), together with interest thereon at the rate of ten percent (10%) per  
26 annum, plus attorneys' fees as allowed under the Note in an amount to be proven at trial  
27 ("Judgment");

28 2. A declaration that such Judgment is non-dischargeable pursuant to 11 U.S.C.

1 §523(a)(2);

2 3. Costs and attorneys' fees as allowed by law; and,

3 4. Such further relief as the Court feels is fair and equitable under the circumstances  
4 alleged herein.

5 Dated: May 31, 2014

6 /s/ Wayne A. Silver

7 Wayne A. Silver, attorney for Plaintiff  
8 KENMARK VENTURES, LLC  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

## EXHIBIT “A”

[Demand Note]

SECURED DEMAND NOTE122  
\$1,000,000.00D-2  
October 25  
November 4, 2007

Cupertino, CA

For value received, the undersigned, Electronic Plastics, L.L.C. and Tony Thomas (collectively "Maker"), promise to pay to the order of Kenmark Ventures, L.L.C., a California limited liability company ("Holder"), on demand, the sum of ~~Five Million Dollars~~ (\$1,000,000.00) together with such additional advances which may be made by Holder to Maker, payable at 21710 Stevens Creek Blvd., #200, Cupertino, CA 95014 or at any other place that may be designated in writing by the Holder. All sums due are payable in lawful money of the United States of America. This Demand Note ("Note") is secured by certain collateral under a Security Agreement executed by the Maker concurrently with the Note.

If the Maker fails to pay this Note when demanded by the Holder, the amount due under the Note shall accrue interest at the rate of ten percent (10%) from the date when the demand was made until paid.

All payments on this Note will be applied first to the payment of any costs, attorney's fees or other charges incurred in connection with the indebtedness evidenced by this Note; next, to the payment of accrued interest; then to the reduction of the principal balance; or in any other order that the Holder requires.

Maker will pay to the Holder all sums owing under this Note without deduction, offset, or counterclaim of any kind. The relationship of Maker and Holder under this Note is solely that of Maker and Holder, and the loan evidenced by this Note and secured by the Security Agreement will in no manner make Holder the partner or joint venturer of Maker.

If any attorney is engaged by Holder to enforce or construe any provision of this Note or the Security Agreement, with or without the filing of any legal action or proceeding, Maker shall immediately pay to Holder on demand all attorney fees and other costs incurred by Holder, together with interest from the date of the demand until paid.

No previous waiver or failure or delay by Holder in acting with respect to the terms of this Note or the Security Agreement will constitute a waiver of any breach, default, or failure of condition under this Note or the Security Agreement.

All notice required or permitted in connection with this Note will be in writing and will be given at the place and in the manner provided in the Security Agreement for the giving of notices.

Maker waives presentment; demand; notice of dishonor; notice of default or delinquency; notice of acceleration; notice of protest and nonpayment; notice of costs, expenses, or losses and interest; notice of interest on interest and late charges; and diligence in taking any action to collect any sums owing under this Note or in proceeding against any of the rights or interests to properties securing payment of this Note. Time is of the essence with respect to every provision of this Note. This Note will be construed and enforced in accordance with California law.



**Jury Trial Waiver:** IN ORDER TO AVOID DELAYS IN TIME AND ANY PREJUDICE THAT MAY ARISE FROM TRIAL BY JURY AND IN LIGHT OF THE COMPLEXITIES OF THIS TRANSACTION, IN THE EVENT OF LITIGATION ARISING OUT OF OR RELATING TO THIS NOTE, THE OTHER LOAN DOCUMENTS AND/OR IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO THIS NOTE, THE OTHER LOAN DOCUMENTS AND/OR ANY OTHER INSTRUMENT, OR THE TRANSACTIONS RELATED HERETO OR THERE TO, IN EACH CASE, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE, THE MAKER, WITH THE PRIOR ADVICE OF COUNSEL, KNOWINGLY, INTELLIGENTLY, AND AS A BARGAINED FOR MATTER, WAIVES ITS RIGHT TO TRIAL BY JURY AND AGREES AND CONSENTS THAT ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION IN RESPECT TO SUCH LITIGATION SHALL BE DECIDED BY TRIAL TO THE COURT WITHOUT A JURY.

IN WITNESS WHEREOF, MAKER has executed this Note as of the date and year first above written at Cupertino, California.

Date: 10/23/07

Electronic Plastic, LLC.

By: Tony Thomas  
Tony Thomas, Manager

Tony Thomas  
Tony Thomas

\\ODMA\GRP\WIS\MMCN\_SJ\DOMAIN\MMCN\_SJ\PO\_CorporateLibrary\23613.1



## EXHIBIT “B”

[Security Agreement]

## SECURITY AGREEMENT

THIS SECURITY AGREEMENT (the "Security Agreement") is entered into effective as of the 25<sup>th</sup> day of August, 2007, by and between TONY THOMAS ("Maker") and KENMARK VENTURES, LLC, a California limited liability company ("Secured Party").

### RECITALS

A. Maker and Electronic Plastics, LLC borrowed the sum of \$5,000,000.00 from Secured Party and executed that certain Demand Note (the "Note") of even date herewith.

B. As security for the payment and performance of the obligations under the Note, Maker desires to grant to Secured Party a security interest in certain property as hereinafter provided.

### AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Grant of Security Interest. Maker hereby grants to Secured Party a security interest in the property described in Section 2 below ("Collateral") to secure Maker's obligations under the Note, and all additional advances thereunder.

2. Collateral. The Obligations shall be secured by a security interest in the following personal property: that certain uncut emerald weighing over 21,000 karats currently in the possession of Shawn Milligan, who is an agent of the Secured Party and kept in a security deposit box, Box Number 7758, at Wells Fargo Bank, MAC 84619-001, 200 So. Virginia St., Reno, Nevada 89501.

3. Term. The security interest established by this Security Agreement shall remain in effect until all obligations of Maker under the Note and this Security Agreement shall have been satisfied in full (the "Term").

4. Perfection of Security Interest. Maker has already delivered possession of the Collateral to the Secured Party for the obligations under the Note, by delivering both keys issued by Wells Fargo Bank to said security deposit box to Shawn Milligan, who is an agent of the Secured Party. Furthermore, at Secured Party's discretion, Secured Party may file a financing statement against the Collateral in compliance with NRS sections 104.9310 and 104.9501 et seq. and the applicable provisions of the law of any other state in which the Collateral may be held or as otherwise deemed appropriate by Secured Party..

5. Secured Obligations. The security interest granted hereunder is created and granted to secure each of the obligations under the Note.

6. Rights of Commercial Code. The parties hereto acknowledge that this Security Agreement is being made under the California Uniform Commercial Code as enacted and

interpreted under the laws of the State of California, and all parties shall have the rights and obligations set forth therein as supplemented and modified by the terms of this Agreement.

7. Election of Remedies. Once an event of default has occurred under this Agreement or when the Note or Agreement or any other written Agreement between the Maker and the Secured Party, the Secured Party shall give written notice to Maker concerning the occurrence of an event of default. Maker shall have 60 days to cure. In the event that the default is not cured within the 60-day period, after 30 days after the expiration of the 60-day cure period, Secured Party may then, or at any time thereafter, elect any of the following remedies:

(a) Sell the Collateral to satisfy the Obligations, or any part thereof, including the expenses of such sale. The sale, at the option of Secured Party, may be at a private or public sale, upon the giving of such notice or notification to Maker as may be required by the California Uniform Commercial Code, by mailing notice, postage prepaid, to Maker's address provided for below.

(b) In lieu of the right to sell the Collateral as provided for above, Secured Party may elect to retain the Collateral in satisfaction of all the Obligations of Maker hereunder after having given notice of such election to Maker; provided, however, that Maker does not object, in writing, to such retention which shall be delivered to Secured Party on or before fifteen (15) days after Secured Party's receipt of notice of the intent to retain the Collateral.

(c) Secured Party may enforce its security interest granted hereunder in any manner permitted by the California Commercial Code.

8. Application of Proceeds. The proceeds of any sale described above shall be applied, in order, to the following:

(a) Reasonable expenses of retaking, holding, preparing for sale, selling and the like, and to the extent provided for in this Agreement and not prohibited by law, reasonable attorneys' fees and legal expenses incurred by Secured Party; and

(b) Satisfaction of the Obligations secured by the security interest under which the disposition is made.

9. Purchase by Secured Party. Secured Party may purchase the Collateral at any public or private sale under conditions specified in the California Commercial Code. Any sale hereunder may be conducted by an auctioneer or agent of Secured Party.

10. Authorized Action by Secured Party. Maker hereby appoints Secured Party as its attorney in fact to do upon the event of default under this Security Agreement or the Note, and exercise such rights and powers as Maker may exercise with respect to the Collateral.

11. Events of Default. Maker shall be deemed in default hereunder upon the occurrence of any of the following events ("Events of Default"):

(a) Failure by Maker to pay the Note when demanded by Secured Party;

(h) Failure by Maker to reimburse the Secured Party for any payment made by the Secured Party under the Guaranty when demanded by the Secured Party; or

(c) Failure of Maker to keep or perform any of the terms or provisions of this Security Agreement and such failure continues for a period of ten (10) days after Maker's receipt of written notice from Secured Party; or

12. Notices. Any notice provided for or permitted to be given pursuant to this Security Agreement must be in writing and shall be deemed to have been properly given only if personally delivered in the official United States mail, postage paid and registered or certified with return receipt requested, or via a reputable overnight mail carrier addressed as follows:

If to Maker: Tony Thomas  
16255 Denali Drive  
Morgan Hill, CA 95037

If to Secured Party: c/o Kenneth S. Tersini  
21710 Stevens Creek Blvd., #200  
Cupertino, CA 95014

Such notices shall be deemed to have been effective upon the date of personal delivery or upon the date shown on the return receipt as the date being delivered.

13. Different Address. Either party may designate a different address upon thirty (30) days written notice to the other party.

14. Advances/Costs Part of Obligation. All advances, charges, costs and expenses, including reasonable attorneys' fees, incurred or paid by Secured Party in exercising any right, power or remedy conferred by this Security Agreement or in the enforcement thereof, shall become a part of the Obligations secured hereunder, and shall be paid to Secured Party by Maker, immediately and upon demand.

15. Additional Documents. Maker shall execute any additional agreements, assignments or documents that may be deemed desirable or necessary by Secured Party to effectuate the purposes of this Security Agreement.

16. Unenforceable Provisions. If any provision of this Security Agreement shall be held by a court of competent jurisdiction to be unenforceable, such provision shall be severed from the remaining provisions, and such remaining provisions shall remain enforceable.

17. Cumulative Rights. The rights, powers and remedies given to Secured Party by virtue of this Security Agreement shall be in addition to all rights, powers, and remedies given to Secured Party by virtue of any statute or rule of law and shall not preclude direct enforcement of this Security Agreement without pursuing the security interest granted herein. Any forbearance, failure or delay by Secured Party in exercising any right, power or remedy hereunder or under this Security Agreement shall not be deemed to be a waiver of any right, power or remedy; and any single or partial exercise of any right, power or remedy hereunder or under the Agreement shall not preclude the further exercise or enforcement thereof hereunder. Every right, power and



remedy of Secured Party shall continue in full force and effect until such right, power or remedy is specifically waived by an instrument in writing executed by Secured Party or upon payment in full of the Obligation.

18. Binding. This Security Agreement shall be binding upon Maker and each of its successors and assigns.

19. Retransfer of Collateral. Upon payment and discharge in full of all obligations described above, Secured Party, or any successor trustee, shall transfer back to Maker its interest in all of the Collateral and shall execute such UCC forms as are necessary or proper to reflect such transfer as may be requested by Maker.

20. Amendment. This Security Agreement may not be amended, modified or changed except in writing signed by the parties hereto. This Security Agreement may not be modified by oral agreement even if supported by new consideration.

21. Time of Essence. Time is of the essence of each and every provision hereof.

IN WITNESS WHEREOF, the undersigned have executed this Security Agreement as of the date first set forth above.

MAKER:

  
TONY THOMAS

SECURED PARTY

KENMARK VENTURES, LLC, a California  
limited liability company

By:

  
KENNETH S. TERSINI, Manager

## EXHIBIT “C”

[Demand Letter]

## MILLER MORTON CAILLAT &amp; NEVIS, LLP

ATTORNEYS AT LAW

October 31, 2008

David L. Nevis

Frank J. Hughes

Peter A. Kline

Stevan C. Adelman

Joseph A. Scanlan, Jr.

William K. Hurley

Peter V. Dessau

David I. Kornbluh

Katherine S. Pak

Christopher J. Hecsey

Anthony F. Ventura

Amber S. Crothall

Daniel J. Nevis

Roger F. Liu

Angela F. Storey

Autumn E. Casadonte

Eric C. McAllister

Harvey C. Miller  
1906-1993Richard W. Morton  
1916-1975Charles V. Caillat  
1920-1990

VIA FIRST-CLASS MAIL &amp; FACSIMILE

Tony Thomas  
Electronic Plastics, LLC  
16255 Denali Drive  
Morgan Hill, CA 95037

Re: KT Properties/Smartcard  
Our File No.: 27980-0710

Dear Tony:

As you know, the business development of Electronic Plastics, LLC ("Company") has not gone the way you had envisioned when you solicited financing from Kenmark Ventures, LLC ("Kenmark") approximately sixteen (16) months ago. Despite your efforts, given the recent defection of all key engineers and other employees, the Company is no longer viable. He does not have a lot of options at this point. Accordingly, Ken has asked me to handle unraveling the financial dealings between the Company and Kenmark. While Ken's practice is to personally handle the business negotiations, he steps back when the matter is referred to counsel. All further communication should, accordingly, be through this office.

Given the current loss of personnel, we see no option other than to request on behalf of Kenmark that Electronic Plastics, LLC and you immediately, but no later than within five (5) days of the date of this letter, make full payment of the principal (i.e., \$6,000,000.00) owed under the note.

We further request that you immediately return the possession of the emerald, which is the collateral for the note, to Kenmark. In accordance with the term of the Security Agreement was executed in October 2007, you delivered the possession of the collateral to Kenmark by virtue of delivering the keys to the safety deposit box at Wells Fargo Bank in Reno, Nevada where the emerald was kept, to Shawn Milligan, an agent for Kenmark. Subsequently, based on your representation that there was a buyer for the uncut emerald, and in order to facilitate such transaction, Kenmark allowed the emerald to be transported to a vault at Sarasota, FL. The sale, unfortunately, did not materialize, and the emerald should now be immediately returned to Kenmark.

Tony, from the legal point of view, the demands in this letter have to be made, and you will need to comply with such demands not to be in default of the Note and Security

Tony Thomas  
October 31, 2008  
Page 2

---

Agreement; however, this does not mean that Ken is abandoning the project. Ken believes in the smartcard technology and is willing, as he has been in the past, to work with you in the future, however, your financial obligations to Kenmark must be brought current.

If you have any questions, please do not hesitate to contact me.

Very truly yours,

MILLER, MORTON, CAILLAT & NEVIS, LLP



By:

PETER A. KLINE

PAK/jns

::ODMA\GRPWISE\MMC\_N\_SJDOMAIN.MMCN\_SJPO.CorporateLibrary:26605.1



## EXHIBIT “D”

[Transcript]

IN THE SUPERIOR COURT, STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SANTA CLARA

---o0o---

BEFORE THE HONORABLE LESLIE C. NICHOLS, JUDGE

KENMARK VENTURES, LLC

No. 1-08-CV-130677

Plaintiff,

vs.

ANTHONY THOMAS,

Defendant.

----- /

REPORTER'S TRANSCRIPT OF PROCEEDINGS

October 5, 2011

---o0o---

A P P E A R A N C E S:

For the Plaintiff: MILLER, MORTON, CAILLAT & NEVIS  
BY: JOSEPH A. SCANLAN  
J. CARLOS ORELLANA  
25 Metro, 7th Floor  
San Jose, CA 95110

For the Defendant: LAW OFFICES OF PATRICIA DOUGLASS  
Michael Gardner BY: PATRICIA DOUGLASS  
98 Interpromontory Road  
Great Falls, VA 22066

(Appearances continued on next page)

REPORTED BY: CHRISTINE BEDARD, C.S.R. #10709

(Appearances continued)

For the Defendant/  
Cross-Complainant  
Anthony Thomas  
A.T. Emerald, LLC

LAW OFFICES OF MICHAEL MORRISSEY  
BY: MICHAEL MORRISSEY  
P.O. Box 2549  
Cupertino, CA 95015

---o0o---

1 October 5, 2011

2  
3 THE COURT: Good morning, everyone, on the Kenmark  
4 Ventures LLC vs. Anthony Thomas and Michael Gardner and related  
5 Cross-complainants. Appearances stated, please.

6 MR. SCANLAN: Joe Scanlan and Carlos Orellana appearing  
7 for Kenmark Ventures Limited as Plaintiffs and Cross-defendant.

8 THE COURT: And Mr. Tersini.

9 MR. SCANLAN: Mr. Tersini a principal of Kenmark is  
10 likewise present.

11 THE COURT: Hello, sir.

12 MS. DOUGLASS: Patricia Douglass appearing for Defendant  
13 Michael Gardner. This is Mr. Gardner.

14 THE COURT: Hello, sir.

15 MR. MORRISSEY: Good morning, your Honor.  
16 Michael Morrissey on behalf of Anthony Thomas, who is here to my  
17 right.

18 THE COURT: And does that also include --

19 MR. MORRISSEY: A.T. Emerald, LLC.

20 THE COURT: A.T. Emerald, LLC.

21 MR. MORRISSEY: Yes, your Honor.

22 THE COURT: We have good news here. We'll take a short  
23 time, but as long as is necessary, to formalize this. This  
24 matter, as stated on the record earlier, was assigned to me,  
25 Leslie Nichols retired judge sitting on assignment for jury

1 trial, and we commenced two days ago on Monday.

2 At that time, there was a stipulation inviting the  
3 Court to participate in settlement discussions while retaining  
4 full authority as trial judge. I accepted that and entered into  
5 extended discussions with all counsel, and they have conferred  
6 extensively with their clients. I have now been presented a  
7 written form of settlement agreement.

8 All counsel have agreed that although the form of it  
9 had provided for signatures, it is the intention that there be  
10 no signatures, but that this be recited as the agreement; is  
11 that correct?

12 MR. SCANLAN: That is correct, your Honor, and that it be  
13 deemed to be judicially enforceable under 664.6.

14 THE COURT: A judicially-enforced settlement agreement  
15 can be approved when a document is reviewed in writing or orally  
16 stated upon the record. And in this case, I have been presented  
17 a writing, and although it's not signed, it is a writing.

18 Do you agree that my review of this writing is that  
19 it's sufficient to give me the opportunity to approve it and to  
20 retain jurisdiction to enforce it?

21 MR. MORRISSEY: We were actually, your Honor, hoping we  
22 could recite the writing through the court reporter and do it  
23 that way.

24 THE COURT: That's fine. We will do that. And then it  
25 would be an agreement orally recited on the record before the

1 Court and subject to enforcement under 664.6 of the Code of  
2 Civil Procedure. Agreed?

3 MR. SCANLAN: Agreed.

4 MR. MORRISSEY: That's correct; exactly right.

5 THE COURT: Something that's not in the writing, but  
6 you're asking the Court to retain jurisdiction to enforce its  
7 terms?

8 MR. SCANLAN: That is absolutely correct and an essential  
9 part of our agreement.

10 MR. MORRISSEY: Yes, your Honor.

11 MS. DOUGLASS: Yes, your Honor.

12 THE COURT: The agreement is in 17 numbered paragraphs,  
13 and for the benefit of our court reporter, if someone will read  
14 it slowly, that will be great.

15 Let me indicate that we're at a quarter to 12:00, and I  
16 don't want to commence this process unless the parties  
17 personally orally affirm now that I'll ask a few questions now  
18 of Mr. Tersini and then quickly of the defendants. Mr. Tersini,  
19 are you the authorized representative of Kenmark Ventures, LLC?

20 MR. TERSINI: Yes, I am.

21 THE COURT: And you're authorized to settle this case on  
22 behalf of the entity?

23 MR. TERSINI: Yes, I am.

24 THE COURT: This document, as you know from my  
25 interaction with all of you folks, has been an interactive

1 process. You were working with your attorney in chambers on the  
2 laptop computer, Mr. Gardner would bring in a computer stick to  
3 stick in my computer, it would be printed out in drafts, and  
4 you've participated in each and every aspect of that; isn't that  
5 true, sir?

6 MR. TERSINI: Yes.

7 THE COURT: Are you satisfied that now, on this third day  
8 of the scheduled trial, you have had ample opportunity, you've  
9 taken an opportunity, the opportunity to confer with your  
10 counsel, so you're ready to approve this agreement?

11 MR. TERSINI: Yes.

12 THE COURT: And at this moment, do you have any questions  
13 of your counsel that you need to be clarified before this is  
14 read into the record?

15 MR. TERSINI: No, I do not.

16 THE COURT: And the Court is being asked to retain  
17 jurisdiction to enforce the terms of this agreement to the  
18 extent possible; is that what you want?

19 MR. TERSINI: Yes.

20 THE COURT: This is out of great respect for you, but you  
21 all seem to be in reasonable health and full capacity. You're  
22 not under the influence of any alcohol or drugs or mind-altering  
23 materials; is that correct?

24 MR. TERSINI: No, I'm not.

25 THE COURT: I've got to ask these questions. You'd be

1 surprised what people say after the fact when they try to get  
2 out of deals. So I take --

3 MR. MORRISSEY: It's not noon, yet, your Honor.

4 THE COURT: I'll take great care. Mr. Thomas, did you  
5 hear the questions that I put to Mr. Tersini?

6 MR. THOMAS: I did.

7 THE COURT: And you speak personally on behalf of an  
8 entity A.T. Emerald, LLC; is that right?

9 MR. THOMAS: Yes.

10 THE COURT: And you're authorized to bind that entity?

11 MR. THOMAS: Yes.

12 THE COURT: You have the authority to do so?

13 MR. THOMAS: Yes.

14 THE COURT: Your answers to each of the questions I put  
15 to Mr. Tersini is the same?

16 MR. THOMAS: Yes.

17 THE COURT: Mr. Gardner, did you hear the questions of  
18 Mr. Tersini?

19 MR. GARDNER: Yes.

20 THE COURT: Are those questions and answers fresh in your  
21 mind?

22 MR. GARDNER: Yes, they are.

23 THE COURT: Do you affirm that your answers are same?

24 MR. GARDNER: Yes, I do.

25 THE COURT: All right. Counsel, you concur?



1 MS. DOUGLASS: We do.

2 MR. MORRISSEY: Yes, your Honor.

3 MR. SCANLAN: Yes, your Honor.

4 THE COURT: Okay. Mr. Scanlan, will you read the  
5 agreement.

6 MR. SCANLAN: Yes, your Honor, I will.

7 THE COURT: Please read each numbered paragraph. Read it  
8 in its entirety and slowly for the benefit of our court reporter  
9 and my brain.

10 MR. SCANLAN: We'll leave a copy with the court reporter  
11 to help her if she has any questions.

12 THE COURT: I'm grateful for that.

13 MR. SCANLAN: One: Parties: This agreement is entered  
14 between Kenmark Ventures, LLC (Kenmark), on the one hand, and  
15 Anthony Thomas, A.T. Emerald, LLC and Michael Gardner, (the  
16 three collectively "defendants" and collectively with Kenmark,  
17 the "parties") on the other.

18 Two: The parties agree that this settlement agreement  
19 is designed to resolve disputed claims by the parties and does  
20 not constitute an admission of any wrongdoing by any party.

21 Three: Payment: Defendants shall pay to Kenmark the  
22 following sums in U.S. dollars. A: \$500,000 on or before  
23 January 1, 2013. B: \$500,000 on or before January 1, 2014.

24 C: \$1,333,333 on or before January 1, 2015. D:  
25 \$1,333,333 on or about January 1, 2016. E: \$1,333,334 on or

1 before January 1st, 2017. The defendants' liability on these  
2 amounts is joint and several.

3 Four: Time is of the essence in the performance of all  
4 obligations hereunder. In the event payments are not made on or  
5 before the date sets forth in paragraph three, then the  
6 defendants shall be in default under this agreement.

7 Notwithstanding the foregoing, Defendants shall have a  
8 five-calendar-day grace period to make any payment missed, in  
9 full.

10 Five: All payments shall be made to Kenmark Ventures,  
11 LLC at 21710 Stevens Creek Boulevard, Suite 200, Cupertino,  
12 California 95014.

13 Six: In the event Defendants fail to make timely  
14 payments set forth as in paragraph three or within the grace  
15 period provided, Kenmark Ventures, LLC may apply, ex parte, for  
16 an entry of judgment in the amount of all sums remaining unpaid  
17 under this agreement.

18 Judgment shall be entered under the forth and fifth  
19 causes of action of Kenmark's First Amended Complaint. The  
20 defendants' liability on any such judgment will be joint and  
21 several.

22 24 hours fax notice shall be given to Defendant of such  
23 ex parte hearing via the office of Michael Morrissey, Esquire,  
24 Counsel for Anthony Thomas and A.T. Emerald, LLC and the office  
25 of Patricia D. Douglass, Esquire.

1 THE COURT: Excuse me. Douglas has two Ss? Thank you.

2 MR. SCANLAN: Seven: Kenmark Ventures, LLC shall  
3 forthwith cause its Florida replevin action to be dismissed and  
4 the 21,000 carat emerald known as the Thomas Emerald made  
5 accessible to Anthony Thomas.

6 Kenmark agrees to execute any and all documents  
7 necessary to release any and all liens, encumbrances and UCC  
8 filings that it has at any time placed as encumbrances on the  
9 Thomas Emerald and provide evidence of the same promptly to  
10 Mr. Morrissey and Ms. Douglass.

11 Eight: Anthony Thomas shall keep Kenmark apprised, at  
12 all times, of all successful sales or monetization of the  
13 Thomas Emerald.

14 Nine: By this settlement agreement, all parties  
15 release all claims, known and unknown, that they have or may  
16 have against each other whether arising from events mentioned in  
17 the pleadings or discovery in this case or otherwise.

18 In connection with that mutual general release, parties  
19 hereby also waive the protection of Civil Code Section 1542: A  
20 general release does not extend to claims which the creditor  
21 does not know or suspect to exist in his or her favor at the  
22 time of executing the release, which if known by him or her must  
23 have materially affected his or her settlement with the debtor.

24 10: In the event a judgement is entered hereunder,  
25 Defendants waive and relinquish any right of appeal,

1 modification or collateral attack on the judgment.

2 11: This settlement was entered in open court by all  
3 the parties hereto and the parties agree and intend that any or  
4 all of its terms and provisions may be enforced by ex parte  
5 motion under C.C.P. Section 664.6.

6 12: A.T. Emerald, LLC and Anthony Thomas must dismiss  
7 their cross-complaint against Kenmark Ventures, LLC with  
8 prejudice within ten court days of the date of this agreement.

9 13: Each party to this agreement shall bear its  
10 respective attorneys' fees and court costs in connection with  
11 this action.

12 14: The defendants will be jointly and severally  
13 liable on any judgement entered under this agreement.

14 15: The parties agree to keep the terms of this  
15 settlement agreement in strictest confidence, except to the  
16 extent necessary to meet obligations imposed upon them by law.

17 The parties agree that if asked about the terms on  
18 which this case was settled, that they will state only that the  
19 matter was settled to the mutual satisfaction of the parties.

20 The parties agree to notify each other of any  
21 apparently lawful request for the information contained in this  
22 agreement before releasing it to a third party.

23 16: The parties agree that they will not disparage or  
24 publicly speak ill of any other party to this agreement.

25 17: This agreement may only be altered in writing,

1 signed by all of the parties. The parties expressly waive any  
2 right to orally modify this paragraph 17 or to enter into any  
3 oral agreement to modify the terms of this agreement.

4 THE COURT: I just have a question. In the event that  
5 unfortunately an ex parte application had to be made to the  
6 Court to enforce the terms of this, we have the possibility of a  
7 court transcript. Now, it may be -- does anyone wish to obtain  
8 a copy of the transcript?

9 MR. SCANLAN: Yes, your Honor.

10 MR. MORRISSEY: Yes, I think that would be a good idea.

11 THE COURT: Because if this were years from now,  
12 sometimes it may be difficult to find the report of the notes.

13 MR. MORRISSEY: Yes, your Honor.

14 THE COURT: So get an authentic copy of that document,  
15 which could then only be used for the purpose of enforcement.

16 MR. MORRISSEY: Yes, your Honor.

17 MR. SCANLAN: Yes, your Honor.

18 THE COURT: Otherwise, I was going to say please initial  
19 the writing or do something, because I would never suggest if  
20 there were successor parties or other things, someone might  
21 submit the authenticity, but with the transcript, you're in good  
22 shape.

23 MR. SCANLAN: Your Honor, I do want to affirm at the end,  
24 because we didn't include the term, that the Court does indeed  
25 have continuing jurisdiction over this matter.

1 THE COURT: Yes, that's not in the writing, but I added  
2 that, and I'll expressly provide that again. The paragraph 11  
3 pretty much covers it --

4 MR. MORRISSEY: Yes, your Honor.

5 THE COURT: -- by saying the settlement was entered in  
6 open court by all the parties hereto, and the parties agree and  
7 intend that any and all terms and provisions may be enforced by  
8 ex parte motion under C.C.P. 664.6.

9 Just one second. But further, and to be express about  
10 it, this means that the Court is asked to retain jurisdiction to  
11 enforce the terms of it, and if it were necessary to enter  
12 judgment, to interpret the document if appropriate and to do all  
13 other things to give full force and effect of the agreement; is  
14 that your understanding?

15 MR. SCANLAN: That is correct.

16 THE COURT: Mr. Tersini.

17 MR. TERSINI: Yes.

18 THE COURT: Ms. Douglass?

19 MS. DOUGLASS: Yes.

20 THE COURT: And you agree?

21 MR. MORRISSEY: I do.

22 THE COURT: And you agree, Mr. Thomas?

23 MR. THOMAS: Yeah.

24 THE COURT: All right. Then the final question, I asked  
25 you these questions earlier, but Mr. Tersini, you have now heard

1 the reading of the very document that you earlier said you  
2 approve, and do you stand on your earlier approval that the  
3 Court has been asked to approve this agreement, direct the  
4 parties to comply with it and to retain jurisdiction to enforce  
5 its terms?

6 MR. TERSINI: Yes, I do.

7 THE COURT: Is your answer the same, Mr. Gardner?

8 MR. GARDNER: Yes, it is.

9 THE COURT: And you as well, Mr. Thomas?

10 MR. THOMAS: Yes.

11 THE COURT: And each counsel agrees?

12 MR. MORRISSEY: We do.

13 MS. DOUGLASS: We do.

14 MR. SCANLAN: Yes, your Honor.

15 THE COURT: Can't do better than that. I do approve this  
16 agreement as recited as requested by the parties and counsel,  
17 and you'll obtain a transcript of that. That's the way you want  
18 to memorialize it; isn't it?

19 MR. SCANLAN: That correct.

20 THE COURT: Our minutes will reflect that the Court has  
21 voir dired the parties and Counsel thoroughly; that they  
22 approved the agreement and asked the Court to retain  
23 jurisdiction, and that the memorialization of this will be in a  
24 transcript obtained, at the very least, by Plaintiff's counsel,  
25 probably all counsel would want to get it.

1 But you'll have that and that will serve as the  
2 evidence necessary should there be further proceedings, because  
3 in accordance with your request, the detailed terms of this will  
4 not be reside in the minutes.

5 I cannot speak to the situation in the unlikely event  
6 that some third party asks for a transcript, that's under the  
7 public records proceedings and that would be dealt with  
8 appropriately by the clerk and court reporter. I will return  
9 this. But you'll be holding those transcripts just for proper  
10 purposes.

11 MR. SCANLAN: That's correct.

12 THE COURT: The Court does each of the things you  
13 requested. I approved the agreement, direct the parties to  
14 comply with the terms of the agreement. I find that this  
15 agreement was entered knowingly, intelligently, without duress,  
16 coercion, each party being in full capacity and knowledgeable.

17 And I affirm their statements that they have all  
18 interacted with counsel, and the bottom line is that this is a  
19 settlement that you have agreed to. I'm glad to approve it. I  
20 appreciate the courtesies of all of you.

21 I respect counsel and the parties. There's been no  
22 adjudication of any wrongdoing. You worked this out on your  
23 terms, and I find that it's appropriate. So I approve it for  
24 that agreement. Thank you so much. Anything else to do before  
25 we conclude?



1 MR. MORRISSEY: Your Honor, sometimes they set a C.M.C.  
2 date out at the end, so January 15th at 2017 for the court  
3 tracking system.

4 THE CLERK: It would be on a Thursday, 10:00 a.m.

5 THE COURT: Okay.

6 THE CLERK: Did you want it to come before you?

7 THE COURT: Just on the general calendar.

8 THE CLERK: January.

9 THE COURT: 2017.

10 MS. DOUGLASS: I think you're busy that day.

11 MR. SCANLAN: Your Honor, as the clerk looks for that, I  
12 would like to steal this minute to thank the Court for its  
13 patience and extraordinary efforts over the last two days, and  
14 in sending this to an end. It's genuinely appreciated.

15 THE COURT: I appreciate everyone's good wishes, and I  
16 reciprocate those feelings.

17 MS. DOUGLASS: Thank you.

18 THE COURT: I always felt it's a little too easy for a  
19 judge to puff up him or herself. I never say I settled the  
20 case. It requires the parties and counsel, but to the extent  
21 I've helped to be a catalyst, I'm grateful for that opportunity.

22 THE CLERK: Your Honor, do you want to set a case status  
23 re dismissal in January?

24 THE COURT: 2017. If the clerk notices anything else,  
25 she'll send it to everybody.

1 THE CLERK: For 2017, we have Thursday, January 4th,  
2 12th, 19th and 26th.

3 MR. MORRISSEY: How about the 19th.

4 THE COURT: 19th.

5 MR. SCANLAN: That's fine.

6 THE COURT: 10:00. January 19th. In the mean time,  
7 you'll have several years to contact the legislature and plead  
8 for appropriate funding for the judicial branch of government,  
9 so there will be a courthouse here. Thank you very much. We'll  
10 be in recess.

11 MS. DOUGLASS: Thank you, your Honor.  
12  
13

14 ---o0o---  
15

1 STATE OF CALIFORNIA )  
2 ) ss.  
3 COUNTY OF SANTA CLARA )  
4  
5

6 I, CHRISTINE BEDARD, Certified Shorthand Reporter, do  
7 hereby certify that I am a pro tempore reporter of the  
8 Superior Court of the State of California, and that has  
9 such, I reported the proceedings had in the above-entitled  
10 matter at the time and place set for herein.

11 That my stenograph notes were thereafter transcribed  
12 into typewriting under my direction; and that the  
13 foregoing pages constitute a full, true and correct  
14 transcription of my said notes to the best of my ability.  
15

16  
17 /s:/ Christine Bedard  
18 -----  
CHRISTINE BEDARD, C.S.R. #10709

19  
20 Dated: November 9, 2012  
21  
22  
23  
24  
25

## EXHIBIT “E”

[Stipulation]

DAVID I. KORNBLUH, ESQ., SBN 162310  
J. CARLOS ORELLANA, ESQ., SBN 233403  
MILLER, MORTON, CAILLAT & NEVIS, LLP  
25 Metro Drive, 7<sup>th</sup> Floor  
San Jose, California 95110  
Telephone: (408) 292-1765  
Facsimile: (408) 436-8272

Attorneys for Plaintiff KENMARK VENTURES, LLC,  
a California Limited Liability Company

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SANTA CLARA

KENMARK VENTURES, LLC, a California  
limited liability company,

Plaintiff,  
vs.

TONY THOMAS, an individual;  
ELECTRONIC PLASTICS, LLC, a Delaware  
limited liability company; MICHAEL  
GARDINER, an individual; and DOES 1  
through 100, inclusive,

Defendants.

Case No.: 108CV130677

STIPULATION FOR JUDGMENT AND  
[PROPOSED] JUDGMENT

**BY PDF**

AND RELATED CROSS-COMPLAINT

RECITALS

WHEREAS, on or about December 19, 2008 Plaintiff Kenmark Ventures, LLC  
("Kenmark") filed suit against Defendants Anthony Thomas, Electronic Plastics, LLC, and  
Michael Gardner;

WHEREAS, on or about March 20, 2009, Defendant filed its First Amended Complaint  
against Defendants Anthony Thomas, Electronic Plastics, LLC, and Michael Gardner alleging,

1 *inter alia*, causes of action for fraud on the alleged basis that Defendant Anthony Thomas as the  
 2 sole member of AT Emerald, LLC, and Defendant Michael Gardiner defrauded Kenmark into  
 3 loaning \$6,110,000.00 to Anthony Thomas and Electronic Plastics, LLC based on written  
 4 misrepresentations and concealments;

5 **WHEREAS**, on or about October 5, 2011, the parties reached a settlement of this action  
 6 which they stated on the record before the Court (the "Settlement");

7 **WHEREAS**, a true and correct copy of the transcript of the hearing at which the  
 8 Settlement was entered into the record is attached hereto as Exhibit "A";

9 **WHEREAS**, the Settlement, among other things, required Defendants Thomas and  
 10 Gardner, jointly and severally to pay Kenmark a total of \$5,000,000 in installments of \$500,000  
 11 on January 1, 2013, \$500,000 on January 1, 2014, \$1,000,000 on January 1, 2015, \$1,000,000 on  
 12 January 1, 2016, and \$1,000,000 on January 1, 2017, with a five-day grace period for each  
 13 payment;

14 **WHEREAS**, Defendants Thomas and Gardner made their first payment under the  
 15 Settlement but have not made any further payments within the time specified in the Settlement;

16 **WHEREAS**, the Settlement provides that upon the failure of Defendants Thomas and  
 17 Gardner to pay any settlement payment, Kenmark may obtain entry of judgment against  
 18 Defendants Thomas and Gardner, jointly and severally, on Kenmark's Fourth Cause of Action  
 19 for Fraud and Fifth Cause of Action for Fraud;

20 **WHEREAS**, Defendant Thomas has promised to pay \$575,000 toward the stipulated  
 21 settlement amount on or before January 30, 2014; and

22 **WHEREAS**, Defendant Thomas's legal name is Anthony as reflected in the transcript of  
 23 the October 5, 2011 hearing before this Court that is attached hereto as Exhibit "A".

24 **IT IS HEREBY STIPULATED** by the parties hereto as follows:

25 1. If payment of \$550,000 is not received by Kenmark on or before January 30,  
 26 2014, judgment shall hereby be entered in favor of Plaintiff Kenmark Ventures, LLC against  
 27 Defendants Anthony Thomas jointly and severally with Defendant Michael Gardner, on  
 28 Kenmark's Fourth Cause of Action for Fraud and Fifth Cause of Action for Fraud in the

1 principal sum of \$4,500,000 (four million, five hundred thousand dollars) together with interest  
2 on the judgment thereafter at the rate of 10% per annum, as provided by law.

3 2. The Clerk of the Court is authorized to enter judgment against Defendant  
4 Thomas in his correct legal name of Anthony Thomas rather than Tony Thomas.

5 3. Defendant Thomas authorizes Kenmark to file this Stipulation and to obtain entry  
6 of judgment on an *ex parte* basis.

7 4. This Stipulation is entered into freely and voluntarily. The parties to this  
8 stipulation acknowledge that they have been represented by counsel of their choice, or had the  
9 option to be represented by counsel of their choice, in the negotiations that preceded the  
10 execution of this Stipulation and in connection with the preparation and execution of this  
11 Stipulation. Each party hereto has executed this Stipulation with full knowledge of its  
12 significance and with the express intention of affecting its legal consequence. None of the  
13 parties hereto have relied upon any representation of any other party in signing this Stipulation.

14 5. This Stipulation may be executed in counterparts and executed facsimiles or PDF  
15 files thereof may be used in lieu of the original for all purposes.

16 Dated: January 27, 2014

17  
18 1272  
KENMARK VENTURES, LLC, Plaintiff  
By: Kenneth Tersini  
Its: Managing Member

19  
20 Dated: January 9, 2014

21  
22 Tony Thomas  
ANTHONY THOMAS, Defendant

23 397666\_1

24 //

25 //

26 //

27 //

28 //

MILLER, MORTON, CAILLAT & NEVIS, LLP  
25 Metro Drive, 7<sup>th</sup> Floor  
San Jose, CA 95110  
Telephone: (408) 282-1766

**JUDGMENT BY STIPULATION**

The Court, having considered the Stipulation of Plaintiff Kenmark Ventures, LLC and Defendant Anthony Thomas, and good cause appearing therefor,

**HEREBY ENTERS JUDGMENT** in favor of Plaintiff Kenmark Ventures, LLC against Defendant Anthony Thomas, jointly and severally, on Kenmark Ventures, LLC's Fourth Cause of Action for Fraud and Fifth Cause of Action for Fraud in the principal sum of \$4,500,000 (four million, five hundred thousand dollars). This judgment shall accrue interest at the rate of ten percent (10%) per year from the date of entry of this judgment.

The Clerk of the Court is authorized to enter judgment against Defendant Thomas in his correct legal name of Anthony Thomas rather than Tony Thomas.

Dated: \_\_\_\_\_

\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT

MILLER, MORTON, CAILLAT & NEVIS, LLP  
25 Metro Drive, 7<sup>th</sup> Floor  
San Jose, CA 95110  
Telephone: (408) 292-1765